IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 500 (MS) OF 2006

Dal Singh,
S/o late Jumma Singh,
R/o Peerwali Colony, Village-Jagjeetpur,
Police Station Kankhal,
District-Haridwar. .....Petitioner.

Versus

1. Smt. Shimla Devi, W/o Dal Singh, D/o late Ram Singh, R/o Village Jagjeetpur Peerwali Colony, Police Station-Kankhal, District-Haridwar.
2. Presiding Officer Family Court, Haridwar, District-Haridwar. .....Respondents.

Mr. Vivek Shukla, Advocate for the petitioner.
Learned Standing Counsel for the respondent no.2.

Dated: 05.05.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order-dated 20.03.2006 (Annexure No. 8 to the writ petition).

Briefly stated, the petitioner was married with the respondent no. 1 about 20 years back and thereafter, they were blessed with three children namely Km. Preeti aged about 18 years, Master Dilip Kumar aged about 15 years and Master Johny aged about 13 years. The petitioner has filed a Suit under Section 13 of the Hindu Marriage Act in the Court of Family Judge, Haridwar. During the proceedings of the case, an application was moved by the respondent no. 1 for the grant of maintenance under Section 24 of the Hindu Marriage Act.

Counsel for the petitioner has submitted that there was also a punch Faisla, where the parties have agreed to pay maintenance at the rate of Rs. 1000/- per month and thereafter, after the repayment of the loan to the extent of Rs. 1,500/-. He has referred Clause 3 of the agreement. The same is quoted below:

"3. जब तक द्वितीय पक्ष दलसिंह द्वारा मकान बनाने हेतु लिये गये ऋण का पूर्ण भुगतान लगभग 15–6–2004 तक नहीं तो जाता तब तक द्वितीय पक्ष दल सिंह प्रथम पक्ष प्रिमला देवी व तीनों बच्चों को गुजारा भत्ता के रूप में 1000/– रूपये माहवार देगा तथा ऋण के पूर्ण भुगतान के तुरन्त बाद से 1500/– रूपये गुजारा भत्ता माहवार के हिसाब से देगा और तीनों बच्चों की शादी दोनों पक्ष मिलकर करेंगे। अतः यह सामाजिक पंच फेसला लिख दिया ताकि सनद रहे और वक्त जरूरत पर काम आवे।"

A written statement has been filed, where in paragraph 19, the respondent no. 1 has admitted with regard to the payment of Rs. 1500/- per month. However, the Family Judge has granted a sum of Rs. 2,000/- towards the maintenance with respondent no.1 per month and a sum of Rs. 2,000/- towards litigation expenses.

Counsel for the petitioner has submitted that the order is liable to be set-aside on the ground of two fold:

1) After the parties have agreed and there was a Punch Faisla for the payment of Rs. 1000/- and thereafter 1500/- the same is binding between the parties.

2) Petitioner is getting salary of Rs. 2500/- after taking into consideration the entire emoluments, which are paid to the petitioner, it comes to Rs. 5959/- and therefore, the maintenance cannot accede more than 1/3rd of the amount, which is being paid to the petitioner.

Considering the arguments of the petitioner, so far as the litigation expenses are concerned, I do no find any illegality in

the order and the same shall be paid by the petitioner forthwith.

So far as the maintenance amount is concerned, liberty is given to the petitioner to apply for reconsideration before the Family Judge in pursuance of the Panch Faisla and if the petitioner files an application for re-consideration of the order, the Family Judge shall consider the same and shall pass an order regarding the maintenance of amount. However, in the meantime, the petitioner shall pay the amount of Rs. 2,000/-, which has been awarded and the same shall be subject to the further orders passed by the Family Judge on the application for reconsideration filed by the petitioner and if the Family Judge considers it fit for reconsideration, the amount so paid by the petitioner shall be adjusted in future. The Family Judge shall also consider the salary certificate of the petitioner and the amount so deposited by the petitioner during the proceedings of the case. If such an application is filed, the same shall be disposed of within a period of six weeks.

Subject to the aforesaid observations, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

05.05.2006
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